

**ADEPT**  
**Legal Commentaries**

February 2004

## Opening of a new legislative session

15 February 2004

On February 5, Parliament resumed its activity after a one-month vacation. This is the seventh session of current legislature, which would last until mid-summer. During her inauguration speech, the Parliament Chair, Eugenia Ostapciuc, once again reaffirmed that European integration was a strategic goal for the Republic of Moldova and called on all the deputies to dedicate entirely their activity towards that goal.

The Chair also called on opposition to take an active part in the ruling party's initiatives. "Braghis Alliance" immediate response was to ask for the Ministry of Foreign Affairs to brief the Parliament on the state of negotiations between Republic of Moldova and EU. The briefing is to take place in the next two weeks.

The Parliament was very prolific in its first week of its activity and adopted a number of legal acts, some of them would be considered in greater detail below.

---

### I. Law on protectionist measures against the import of sugar at dumping prices

**ADEPT Comment:** Via the law a special tax on the imported sugar was set worth 100-115 Euro/ tone throughout 2004-2008. This tax shall be paid in addition to the customs tax, regardless of country of origin. The move is aimed to protect domestic sugar producers, however on the expense of the consumers who are likely to pay a higher price on sugar.

Noteworthy, Government representatives refrained from commenting on whether the sugar price on the market would have dropped if cheaper sugar was imported. It seems that the interests of the domestic producers have prevailed over that of the consumers.

---

### II. Law on the Modification of the Law on Local Taxes

**ADEPT Comment:** Via the law the Parliament abolished such taxes as: salubrity tax, tax for packaging and wastes disposal, as well as state border tax. The latter would deprive local public administration of the border regions from one of their most important sources of income. On the other hand, it reduces the number of taxes due and facilitates the transit of goods and travellers.

It is expected that the law would raise severe criticism among authorities who used to lever those taxes, especially as they were already provided for in their budgets for 2004.

---

### III. Law on establishing a preferential VAT on delivery of goods

**ADEPT Comment:** Under the modifications to the Fiscal Code, a 5% VAT on zootechnical, fitotechnical and agricultural products was established throughout 2004. The amendments are aimed at facilitating the acquisition of natural products by large acquisition networks and cooperatist societies.

Noteworthy, there are many others who could advantage of the law. On the other hand, the great number of intermediaries between the producer and consumer might undermine the very purpose of the law as the sale price would also include an increased VAT. To avoid it the specialised bodies would have to pay a close attention to the way the market price is formed.

---

#### IV. Law on the modification of the Fiscal Code in view of enlarging the application of banking cards

**ADEPT Comment:** The law allows for paying fiscal obligations by means of banking cards, date of payment being considered the day the account was debited.

---

#### V. Laws on the ratification of international acts

**ADEPT Comment:** Parliament ratified the following international acts:

1. **Agreement between the Government of the Republic of Moldova and the Government of Sweden on the framework and terms of co-operation throughout 2003-2008.** The agreement provides for a yearly assistance to be granted to the Republic of Moldova by Sweden worth 5 million USD.
  2. **Protocol on European Community joining the International Convention on the co-operation in air traffic safety.** Republic of Moldova is a full right member of the organisation and endorsed its adhesion to the Convention.
  3. **Protocol on involving children in the armed conflicts to the Convention on the children's rights.** Protocol prohibits recruiting and involving persons up to 18 in military conflicts.
  4. **Protocol amending the European Convention on fighting terrorism.** The Protocol is aimed at updating the list of international conventions on fighting terrorism, defining new procedures for monitoring conventions' enforcement, giving a larger mandate to the European Committee overseeing Convention enforcement, etc.
- 

#### VI. Draft law on the modification of the Code of the Auto Transportation

**ADEPT Comment:** The draft approved in the first reading provides new grounds for recalling the license on auto-transportation, namely:

- Accidents involving licence holder, or his/her failure to keep the vehicle in good technical conditions, and/or failure to take all the measures to prevent an accident based on a court ruling and that has incurred a death, or injury to passengers;
- Transporting passengers and luggage in other vehicles than the ones the license was issued for;
- Failure to comply with the route, stations as provided for by the regulation;
- Bypassing customs check points, unloading the goods in places not authorised by the customs officers.

The amendments were severely criticised both by the ruling party and opposition. The former argued that there were no legal grounds for the said amendments and that the sanctions might affect the interests of several parties. The latter argued that the amendments would allow ruling party to do away with competitors and promote their own operators loyal to them.

Law authors had answers at hand to all the questions, and finally deputies decided to pass the law in the first reading, while the responsible commission was entrusted to perfect the law so as to take into consideration the interests of all the parties.

Noteworthy, previously Government made several attempts to fight illegal transportation in response to numerous accidents involving unauthorised means of public transportation. The issue was also on the agenda of several meetings convened by the President. Moreover, deputies called on Government to do some order in the field of public transportation. Nevertheless, despite the good intentions, when group or personal interests are at stake, ruling party is not so united in its position and may even compete with the opposition in defending.

---

## **VII. Draft law on the modification of the Law on ID**

**ADEPT Comment:** The modifications envisage granting a diplomatic passport to the Chair of the Chamber of Commerce and Industry, and a service passport to the Deputy Chair as well as to Chair of the Court of Commerce Arbitration.

---

## **VIII. Draft law on the modification of the Penal Code**

**ADEPT Comment:** The draft includes a new wording for Article 216 of the Penal Code - **Production (counterfeit), import, transportation, storage, sale of products (goods), rendering services dangerous to the consumers' health.**

It is proposed that production (counterfeit), import, transportation, storage, sale of products (goods), rendering services dangerous to the consumers' life and health should be sanctioned with a fine of 450 units (one unit equal to 20 MDL) and from 3 to 7 years in prison, whereas for legal entities a fine equal to 10,000 units, and prohibition to conduct certain activities, with (or without) liquidating the company.

In addition it is proposed to amend Article 254 of the Penal Code - **Sale of poor quality products or not complying with the standards.**

It is proposed that deliberate sale of products of poor quality or not complying with the standards that have brought damages should be sanctioned with a fine worth 300 conventional units and 3 to 7 years in prison, whereas for legal entity a fine of up to 10,000 units and prohibition to conduct certain activities, with (or without) liquidating the company.

## Parliament activity, February 9-13, 2004

16 February 2004

During the aforesaid period the debates in Parliament were quite politicised. During the two days of plenary session Communist faction and opposition exchanged numerous accusations. However, the most controversial debates accompanied the draft laws submitted by the opposition that the majority faction refused to endorse, and vice versa submitted by the Government and majority faction that were severely criticised by opposition, criticism not taken into consideration by the ruling party.

Another source of discontent was the initiative to suspend the immunity of Christian-Democrat deputies accused of staging protest rallies and being under investigation. The three deputies: Vlad Cubreacov, Stefan Secareanu and Valentin Chilat did not attend the hearings of the Legal Commission for Appointments and Immunities and were therefore summoned to the plenary session. Citing some procedure irregularities the three left the plenary session, followed later on by the deputies of the "Braghis Alliance". As a result, Communists accused the latter for endorsing "profane actions" of the state symbols of the Russian Federation. "Braghis Alliance" leader responded that he did not support illegal actions and that he did not want to be a part of the "show put on by Communists and Christian-Democrats". Finally, the Parliament decided to suspend the immunity of the three deputies with the vote of 69 Communist and independent deputies. The three shall be liable for staging illegal protest rallies at the Russian Embassy, National TV and for unauthorised protests throughout downtown. As Christian-Democrats' leader, Iurie Rosca was not in the country, Prosecutor General adjourned the examination of the request to suspend his immunity.

Despite the harsh debates, Parliament examined a number of legal acts that would be given a thorough consideration bellow.

---

### I. Law on the modification of the Law on Government

**ADEPT Comment:** The law provides for the reorganisation of the Ministry of Environment, Constructions and Territory Planning into two separate structures:

- Ministry of Environment and Natural Resources;
- Department for Constructions and Territory Planning.

The debates on the law continued for two days, great many opposition deputies but also Communist ones criticised the initiative on the grounds it was too expensive and useless. The law was passed only after deputies received assurances that no additional staff or funding would be required.

Noteworthy, during a recent meeting at the Ministry, President Voronin dubbed it as a "monster" failing handle all the tasks it was entrusted. Immediately afterwards Gheorghe Duca was elected Chair of the Academy of Science. However, prior to that President criticised the Academy as well, threatening to take actions unless some meaningful changes happened.

There is yet another explanation to the deputies' criticism: as long as Gheorghe Duca, former member of the Democratic Party and "Braghis Alliance", headed the ministry no criticism at all had been expressed, whereas immediately he secured a safe position in another institution the ministry was subject to large-scale reorganisation.

---

### II. Law on debt transferring

**ADEPT Comment:** Parliament decided to transfer the debts incurred by the "East electric networks" state enterprise to its creditor, "Energoreparatie" state enterprise. The debt worth 750 thousand Lei was incurred as a result of certain normative acts that cancelled the debts of agricultural enterprises. It would be covered from the state budget by compensating the taxes that the creditor was due. Noteworthy, the creditor does not have any fiscal relations with the Republic of Moldova as it was subordinated to Tiraspol.

---

### III. Law on the modification of the Labour Code

**ADEPT Comment:** Under the modifications the provision obliging employers applying for licensing to have a prior permission of the work protection bodies, was excluded. The Government lobbied the amendment with a goal to reduce the number of legal acts required for licensing and thereby boost small business.

---

### IV. Resolution on 645-th anniversary of the Moldovan state

**ADEPT Comment:** It was decided to celebrate the 645th anniversary of the Moldovan state via numerous events at the national and local level, which is of paramount importance for the "steadiness of the Moldovan nation. The document does not specify on the territory where the celebrations are to be held, between Prut and Dniester or on the whole area known as Moldova. The decision was passed in order to consolidate "multinational Moldovan" society, accelerate the restoration of the territorial integrity, and Moldova's affirmation in European community. The document does not provide any clear mechanisms for pursuing the said goals.

Noteworthy, 2004 was declared the year of Stefan the Great - 500 anniversary of his death. The anniversary would also be celebrated in Romania. To as to avoid any confusion, Republic of Moldova decided to mark another event - 645th anniversary of the Moldovan state.

---

### V. Laws on the ratification of international acts

**ADEPT Comment:** Parliament ratified a number of international acts:

1. **Agreement on free trade between Republic of Moldova and Ukraine.** One of the opinions expressed during the debates was that the Agreement would damage domestic producers, as the market would be flooded with cheap Ukrainian goods. Government replied that it would never happen and that the agreement would open Ukrainian market for Moldovan goods.
  2. **Resolution of the CIS Governmental Council on the remuneration in the community bodies.** The document provides for a wage increase to the officials working in the CIS structures so as to adjust them to the general living standards. Republic of Moldova would not contribute towards the wages of the military and security forces given its status.
  3. **Status of the Intra-European Organisation of Fiscal Administrations.** The organisation promotes co-operation and exchange of experience between fiscal authorities of the member countries.
- 

### VI. Draft law on the modification of the Law on state tax

**ADEPT Comment:** The draft passed in the first reading provides for establishing a state tax for using official or historic name of the state on the brand of the product or service. For the brands already in use the tax would represent 1% of the brand value as recorded in the balance sheet, and in case of first time application - 10% of the brand market value.

---

### VII. Draft law on the modification of the Law on Administrative Adjudication

**ADEPT Comment:** The amendments provide that in case Administrative Court finds that the matter does not fall within its competence it should decline its competence.

## Parliament activity, February 16-20, 2004

23 February 2004

This week Parliament focussed on the relationship between power and opposition, as well as ruling party policy on the major problems in society.

At February 19 session Minister of Foreign Affairs briefed MPs on the efforts undertaken in view of European integration. The recently appointed Minister delivered a 15-minute report reviewing the current state of affairs, though refraining from outlining the perspective of future talks with EU on the individual action plan. A brief Q&A session followed, Communist deputies only clarified certain aspects, whereas opposition deputies inquired to what extent had Moldova complied with the European Parliament resolutions. Parliament failed to reach a consensus on how to proceed further with regard to issues debated, and discussions were ended in 30 minutes.

Deputies also examined a number of legal acts, some of which will be considered in detail below.

---

### I. Law on the modification of legal acts regulating pharmaceutical industry

**ADEPT Comment:** The law is forbidding the sale or exchange of medications among wholesalers. Also medications and drugs are to be only imported directly from producers or their authorised dealers.

Boosting pharmaceutical industry has been on Government agenda before. And this because only 3% of the drugs and medications available on the market are produced domestically. While the imports are soaring, domestic industry is still weak and unprofitable. It is worth mentioning that Government annulled the contract on the privatisation of the largest domestic manufacturer "Eurofarmaco". As a result invested capital had to be returned, which made the business un-profitable for quite a while.

---

### II. Law on the ratification of the Stockholm Convention on persistent organic polluters

**ADEPT Comment:** Convention is aimed at protecting peoples' health and environment against organic pollution. A number of provisions refer to the funds needed to enforce the convention. Lawmakers argued that no additional funds would be necessary to enforce the law, as countries in transition are exempted from membership fees.

Noteworthy, previously NATO provided financial support to the Republic of Moldova to process the dangerous substances stocked on its soil.

---

### III. Resolutions on appointing Senior General Prosecutor and confirming Prosecution College

**ADEPT Comment:** Parliament appointed Valeriu Gurbulea as Senior Deputy to the Prosecutor General, previously Secretary of the Supreme Security Council of the Moldovan Presidency. Previously opposition press and civil society organisations accused Mr. Gurbulea of wielding heavy influence on the law enforcement forces and corruption. They asked the President either to oust him or provide evidence to the fact that Gurbulea was innocent, however the President remained tight-lipped on the subject.

Parliament passed a resolution and confirming the membership of the General Prosecution College, keeping only Alexandru Stoianoglo (former Prosecutor of Gagauz Yeri) and Nicolae Oprea as Senior Prosecutors among its new membership. New members joined the College, namely:

- Prosecutor of Gagauz Yeri (pursuant to the Law on the Legal Status of Gagauz Yeri Autonomy);
- Prosecutor of Balti Municipality;
- Chief of the specialised department on penal proceedings within General Prosecution;
- Chief of specialised department on penal proceedings within Ministry of Internal Affairs;
- Prosecutor of Botanica district in Chisinau Municipality.

---

### IV. Draft law on modifying and completing the Law on Real Estate Registry

**ADEPT Comment:** The draft submitted by the Government changes the procedure of registering the real estate. The law provides for access to estate data-bases held by the legal bodies and local public administration. The draft also provides that the tariffs on services provided by real estate bodies are to be approved by Government, so as to ensure enough funds and also observe the interests of vulnerable strata of the population.

---

## **V. Draft resolutions on suspending the immunity of deputies in Parliament**

**ADEPT Comment:** Parliament majority decided to suspend the immunity and sent to court three Christian-Democrat deputies: Iurie Rosca, Vlad Cubreacov and Stefan Secareanu. They are persecuted for staging unauthorised protest rallies and profaning Russian Federation symbols (i.e. burning the flag and the portrait of President Putin).

In addition, Prosecutor General requested Parliament to suspend the immunity of "Braghis Alliance" Nicolae Malachi, accused of illegal privatisation of a resort on Black Sea, thereby incurring a 200 thousand Lei loss to the state budget. According to Prosecutor General, Mr. Malachi struck the said murky bargains at the time he held a high rank position in county administration.

The resolutions were voted in the absence of opposition deputies. Christian-Democrat leader severely criticised majority faction for the policies it was pursuing.



## Parliament activity, February 23-27, 2004

5 March 2004

Last week Parliament continued examining requests filled by the Prosecution to suspend the immunity of some opposition deputies. This time however, a "Braghis Alliance" deputy joined the company of Christian-Democrats whose parliamentary immunity was previously suspended. It's illegal privatisation, rather than protest rallies that served grounds for suspending his immunity.

Previously, Christian-Democrats were liable of administrative offence, now they are liable of penal offence for profaning Russian Federation state symbols. Under Penal Code, **profaning national or state symbols (flags, coat of arms, anthem) of the Republic of Moldova or any other state** - is sanctioned by penalties worth 500 units (10,000 Lei) or from 2 to 6 years in prison.

It is still not clear whether authorities would manage to prosecute opposition, one thing is for sure majority faction gave green light to Prosecution to persecute the four deputies.

Besides those issues, the Parliament adopted a series of important legal acts.

---

### I. Law on VAT exemptions of imported vine

**ADEPT Comment:** The law is aimed to support the revival of vine plantations, by exempting from VAT vine imported to Moldova. The law was lively debated, there were voices claiming that the law would affect the state budget and that Government should have come with the initiative before 2004 budget was adopted. In the end, majority faction voted in favour of the draft, as did opposition deputies. The law does not provide for concrete mechanisms of overseeing the law enforcement.

---

### II. Law on publishing international treaties

**ADEPT Comment:** Parliament re-voted the law sent back by the President of the Republic of Moldova. The law provides that international treaties ratified by Moldova should be published in Official Monitor within one month of entering in force. Ministry of Foreign Affairs should oversee this. Noteworthy, under Moldovan Constitution international acts Moldova is part to, have the same force as the domestic legislation and are to be enforced likewise. However, unless the treaties are published they have no legal effect.

---

### III. Law on supplement to the pension for residents of Copanca commune

**ADEPT Comment:** According to the law, pensioners residing in Copanca commune, situated on the left bank of Dniester, should be entitled to a supplement ranging from 50 to 100 Lei so as to bring their pension in line with those paid in break-away region. The estimated cost of the law is over one million Lei, which is to be covered from state social security. Therefore, Government is to come with concrete recommendations and mechanisms on how to cover the costs.

Noteworthy, this is the first act aimed to improve the welfare of the residents to the left of Dniester, region controlled by Chisinau. Previously similar laws were passed for residents of Cosnita, Palanca, Cocieri etc. This string of laws is aimed at giving at least some protection to the residents facing huge pressure from Tiraspol regime.

---

#### IV. Draft law on the modification of the privatisation plan

**ADEPT Comment:** The modifications excluded a number of enterprises specialised in constructions from privatization programme, so that they would remain under state control.

Again, there were a lot of debates and arguments around the draft law. Opponents pointed that the enterprises excluded from the privatisation are not entirely state-run, having a share of private capital. Majority faction neglected those arguments and passed the law. Throughout 2001-2003 the Parliament passed a total of 8 laws excluding various enterprises from the privatisation list.

---

#### V. Draft Title VII "Local taxes" of the Fiscal Code

**ADEPT Comment:** The draft passed in the first reading regulates local taxes. Initially, some local taxes were to be excluded from the title, namely 6 of them:

- For car parking;
- For dog owners;
- For the right of cinema and TV shooting;
- For providing local transportation services;
- For crossing the state border;
- For the right to trade in the customs area.

Deputies agreed on excluding only two out of the six recommended by Government, namely for the right to cinema and TV shootings and for the right to trade in customs area. The other four would be preserved, so as not to impair local budgets.

Another key element of the Title is that the new structure would grant more responsibilities to the local government in exploiting every opportunity to secure revenues to the local budget. When drafted, lawmakers studied carefully the experience of other transition countries and the freedom granted to local authorities there to establish local taxes.

Local taxes would be introduced, changed or annulled upon adoption or modification of relevant budgets of the administrative-territorial units (Art.297(3)).

Under the draft, legal and natural entities "residents or non-residents that do business on the soil of the Republic of Moldova; non-resident natural entities, citizens of the Republic of Moldova, foreign citizens or stateless persons" are subjects of the law. The draft also proposes to preserve the procedure of establishing, calculating and paying local taxes. Taking into account the ceiling of local taxes, local public administration bodies would set the amount of taxes to be paid.

The draft also proposes to preserve current exemptions to the payment of local taxes for public authorities, state-funded institutions, diplomatic missions, missions of international organisations. In addition, new exemptions are proposed, i.e. for organisers of auctions held to reimburse debt on credits, damages, debt to the state budget, or to sell state or municipal patrimony. At the same time, first level representative and deliberative bodies are entitled to grant exemptions in addition to those provided by law.

To ensure consistency of the Fiscal Code, local taxes ceiling shall be provided for in Title VII. They were developed by taking into consideration the existing ones.

---

#### VI. Draft law on energy

**ADEPT Comment:** The draft passed in the first reading stirred a lot of debates. It outlines the principles regulating the production, transportation, distribution, delivery and use of heating. The law is intended to:

- Increase the efficiency of the heating system;
- Boost a large scale competition on the market;
- Boost private enterprise and consolidate the private sector in the field;
- Attract domestic and foreign investments in the energy sector;
- Diversify forms of property in the energy sector;

- Regulate the activity of energy manufacturers holding monopoly on the energy market;
- Foster sustainable development of the energy system in the Republic of Moldova;
- Establish fair relations between supplier and consumer.

The draft law outlines a number of specialised notions, fundamental principles for the operation of the energy system, and responsibilities of specialised bodies. Separate chapters are reserved for licensing, guaranteeing property rights, and legal relations between the actors on the energy market, tariffs on energy.

Given the harsh debates we may expect that the final wording would undergo quite a number of modifications, therefore ADEPT promises to follow closely the developments.